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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,319	01/11/2002	Fumio Sugaya	Q66579	4442

7590 07/13/2005

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3202

EXAMINER

CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,319

Applicant(s)

SUGAYA ET AL.

Examiner

LaToya I. Cross

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicants' amendments filed on April 25, 2005. Claims 1-6 are pending. Claims 3 and 4 are withdrawn from consideration as being directed to non-elected subject matter. Claims 5 and 6 have been newly added.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants' admitted prior art in view of US patent 6,838,051 to Marquiss et al.

Applicants' admit in their Jepson claim that incubators comprising with a plurality of element chambers which are arranged along the outer periphery of the incubator rotor and each of which accommodates a dry analysis element spotted with a sample and incubates the dry analysis element and a light measuring means having a light measuring head which measures the optical density of the dry analysis element are known.

With respect to Applicants' claimed improvement, Applicants recite the light measuring means having a correction means that compensates for fluctuations in the optical density.

Marquiss et al teach a sample processing system comprising a light monitor (5122). Marquiss et al teach that the light monitor used to correct for fluctuations in the intensity of light provided by the light sources. Such corrections may be performed by reporting detected intensities as a ratio over corresponding times of the luminescence intensity measured by the detector to the excitation light intensity measured by the light monitor. The light monitor also can be programmed to alert the user if the light source fails. Thus, the light monitor is in communication with the light source, as recited in claim 6. See col. 44, lines 40-48.

It would have been obvious to one of ordinary skill in the art to modify the incubators known in the art with a light monitor to provide a manner for assuring accurate results by correcting for light intensities.

With respect to claim 2, the manner in which the correction means operates within the device is not sufficiently limiting to make the claims patentable since the limitation is directed to the manner in which the device operates. See MPEP 2114.

With respect to claims 5, Marquiss et al teach a transport module (2100) as a part of the system for transporting slides from I/O areas to various other functions in the system. As a part of the transport module, the reference teaches a bar code reader (col. 17) which may serve as a position detector to determine the position of the test slide, as claimed by Applicants.

Response to Arguments

2. Applicant's arguments filed April 25, 2005 have been fully considered but they are not persuasive. With respect to the Marquiss et al reference, Applicants argue that Marquiss et al fail to teach that the light monitor monitors fluctuations in the optical density of the analysis element. The Examiner does not agree that this argument overcomes the obviousness rejection over Marquiss et al. First it should be noted that the claim language, "correction means which compensates for fluctuation" does not conform with the requirements of 112, 6th paragraph such that "means plus function" is invoked. Thus, in the instant claims "mean plus function" is not invoked. The Examiner has taken "correction means" to be a structural limitation, not a functional one. Marquiss et al do teach a correction means by way of the light monitor. Thus, given the broadest reasonable interpretation to the claims, the limitations are met.

Even if, however, the claims were interpreted as "means plus function" claims, the Examiner believes the claims to be obvious over Marquiss et al. The Examiner finds no significant (or patentable) difference in a correction of fluctuations from the analysis element versus a correction in fluctuations from the light source. It should be noted that even the fluctuations from the analysis element are due to the light (optical density). Thus, since Marquiss et al teach correcting for fluctuation in the light source, then fluctuations in the analysis element, that are caused by light would be obvious.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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YELENA GAKH
PRIMARY EXAMINER